

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LEI TANG)	
)	
Plaintiff,)	Case No. 1:23-cv-16489
)	
v.)	Judge Charles P. Kocoras
)	
THE INDIVIDUALS, PARTNERSHIPS, AND UNINCORPORATED ASSOCIATIONS IDENTIFIED ON SCHEDULE "A")	Magistrate Jeannice W. Appenteng
)	
Defendants.)	

**PLAINTIFF’S MOTION FOR ENTRY OF DEFAULT AND DEFAULT JUDGMENT
AGAINST THE DEFENDANTS (No. 73) bodhi1998, (No. 74) bigbigshow2012,
(No. 76) broadfashion, (No. 110) wishmart2014, (No. 140) VISLAND
AND INCORPORATED MEMORANDUM OF LAW**

Plaintiff Lei Tang (“Plaintiff” or “Tang” hereinafter) by and through his counsel, moves this Honorable Court to enter Default and Default Judgment against certain Defendants (No. 73) bodhi1998, (No. 74) bigbigshow2012, (No. 76) broadfashion, (No. 110) wishmart2014, (No. 140) VISLAND, (“Defaulting Defendants” hereinafter) identified on Amended Schedule A. In support of this Motion, Plaintiff submits the following Memorandum of Law.

MEMORANDUM OF LAW

I. BACKGROUND AND RELEVANT PROCEDURAL HISTORY

Plaintiff filed his Complaint in the instant civil action on December 5, 2023 alleging copyright infringement (17 U.S.C. §101 et seq.). [Doc 1 at ¶¶ 35-49]. On December 14, 2023, Plaintiff moved for expedited third-party discovery [Doc. 7] and for alternate service [Doc. 8]. The motions were granted by the Court on December 18, 2023 [Doc. 12]. On December 14,

2023, Plaintiff moved for entry of a temporary restraining order, including a temporary injunction, a temporary asset restraint, January 12, 2024. [Doc. 17]

Defaulting Defendants were properly served with the Summons and Complaint on February 7 and 19, 2024. [Doc. 32, 39] Defaulting Defendants have entered an appearance but failed to file an Answer within the permissible time period. *See* attached Exhibit One, Declaration of Lydia Pittaway at ¶ 13, (hereinafter, “the Pittaway Declaration”). Specifically, Defendants failed to file an Answer by May 14, 2024 pursuant to this Court’s Order [Doc. 61]. Plaintiff now moves for entry of default against those remaining Defendants pursuant to Fed.R.Civ.P. 55(a) and default judgment under Fed.R.Civ.P. 55(b) to include an award of statutory damages as authorized by 15 U.S.C. § 1117(c) and entry of an order permanently enjoining the Defaulting Defendants from further acts of copyright infringement.

II. SUMMARY OF THE ARGUMENT

Jurisdiction and venue are proper in this Court. Plaintiff has met the requirements for entry of default and default judgment. Plaintiff is entitled to an award of statutory damages for willful copyright infringement. A high statutory damages award is appropriate and just, and also consistent with this Court’s prior award of \$100,000. [Doc. 54]. A permanent injunction must be granted to prevent any further acts of copyright infringement by the defendants.

III. ARGUMENT

a) Jurisdiction and Venue are Proper in This Court

This Court has original subject matter jurisdiction over the claims in this action pursuant to the provisions of the Lanham Act, 15 U.S.C. § 1051, et seq., 28 U.S.C. § 1338(a)-(b) and 28 U.S.C. § 1331. Venue is proper in this Court under 28 U.S.C. § 1391. This Court may properly exercise personal jurisdiction over Defendants since each of the Defendants directly targets

business activities toward consumers in the United States, including Illinois, through at least the fully interactive, commercial Internet stores operating under the Defaulting Defendants [Doc. 1 at ¶¶ 2-3, 24, 33]; *uBID, Inc. v. GoDaddy Grp., Inc.*, 623 F.3d 421, 423-24 (7th Cir. 2010) (without the benefit of an evidentiary hearing, the plaintiff bears only the burden of making a prima facie case for personal jurisdiction; all of plaintiff's asserted facts should be accepted as true and any factual determinations should be resolved in his favor).

Through fully interactive commercial Defendants' Internet Stores, Illinois residents can purchase products that are sold and advertised on online marketplaces by the Defaulting Defendants to the Plaintiff's damage. *See, e.g., Christian Dior Couture, S.A. v. Lei Liu, et al.*, No. 1:15-cv-06324 at *5-6 (N.D. Ill. November 17, 2015) (personal jurisdiction proper over defendant offering to sell alleged infringing product to United States residents, including Illinois; no actual sale required). Therefore, personal jurisdiction is proper because each of the Defendants is committing tortious acts in Illinois, is engaging in interstate commerce, and has wrongfully caused Plaintiff substantial injury in the State of Illinois. [*Id.* at ¶¶ 2-4, 14]

b) Plaintiff has Met the Requirements for Entry of Default and Default Judgment

Under Rule 55(a) of the Federal Rules of Civil Procedure, "when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a). In general, a defendant must file an answer or responsive pleading within twenty-one days after being served with the summons and the complaint. Fed. R. Civ. P. 12(a)(1)(A)(i), (b).

Plaintiff filed his Complaint on December 5, 2023, alleging copyright infringement. [Doc. 1]. Plaintiff served the Defendants with the Summons and Complaint on February 7 and 19, 2024. [Doc. 32, 39]. This Court extended the time for Defaulting Defendants to file through

May 14, 2024, however the Defaulting Defendants have not filed any Answer or otherwise defended this action. [Pittaway Declaration at ¶ 13] Accordingly, Plaintiff asks for entry of default against the Defaulting Defendants.

Rule 55(b)(2) of the Federal Rules of Civil Procedure provides for a court-ordered default judgment. A default judgment establishes, as a matter of law, that defendants are liable to Plaintiff on each cause of action alleged in the complaint. *United States v. Di Mucci*, 879 F.2d 1488, 1497 (7th Cir. 1989). When the Court determines that a defendant is in default, the factual allegations of the complaint are taken as true and may not be challenged, and the defendants are liable as a matter of law as to each cause of action alleged in the complaint. *Black v. Lane*, 22 F.3d 1395, 1399 (7th Cir. 1994). As noted above, Plaintiff served Defendants with the Summons and Complaint on February 7 and 19, 2024. [Doc. 32, 39]. More than twenty-one (21) days have passed since the Defaulting Defendants were served, and no answer or other responsive pleading has been filed by any of the Defaulting Defendants. *See* Fed. R. Civ. P. 12(a)(1)(A).

Plaintiff requests an award of statutory damages as authorized by 17 U.S.C. §504(c)(2) for copyright infringement against each of the Defaulting Defendants for use of infringing and counterfeit imitations of Plaintiff's copyrights in connection with products marketed, offered for sale and sold through the Defendants' Internet Stores. Plaintiff also seeks entry of a permanent injunction prohibiting Defaulting Defendants from selling Counterfeit/Infringing Products and displaying the copyright works that all assets in Defaulting Defendants' financial accounts operated by Amazon, eBay, Paypal, Payoneer, Walmart and other financial institutions, including but not limited to Stripe and Lianlian and any newly identified accounts be transferred to Plaintiff.

Accordingly, Plaintiff having properly set out his claims, as addressed in detail below, entry of default and default judgment is appropriate.

c) Plaintiff Has Properly Pled a Claim for Copyright Infringement

To establish copyright infringement, Plaintiff is required to prove two elements: “(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original.” *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 349, 111 S.Ct. 1282, 113 L.Ed.2d 358 (1991). Plaintiff has demonstrated his ownership of a valid copyright by attaching to his Complaint and placing on record, via a declaration, Copyright Registration Nos. VA0002250612 and VA0002250627, which have effective registration dates May 10 and 11, 2021. [Doc. 1 at ¶¶ 9-10]. This registration creates a *prima facie* presumption of validity of a copyright. 17 U.S.C. § 410(c); *Runstadler Studios Inc. v. MCM Ltd., P’ship*, 768 F.Supp.1292, 1294-1295 (N.D.Ill. 1991).

Here, Defendants are willfully and deliberately reproducing Plaintiff’s Tang Works, either in their entirety or in substantially similar form, and are willfully and deliberately distributing copies to the public through their advertisements, marketing, and displays. A true and correct copies of screenshots, produced as part of Plaintiff’s investigation, of products sold and offered for sale by Defendants utilizing his Tang Works without authorization. [See 6-4]. Plaintiff has proven it has more than a reasonable likelihood of success showing Defendants’ violation of Plaintiff’s rights.

d) Plaintiff Is Entitled to an Award of Statutory Damages

Courts have recognized that “[s]tatutory damages are ‘most appropriate’ when an infringer's nondisclosure makes actual damages uncertain.” *Luxottica USA LLC v. The Partnerships*, Case No. 2014-cv-09061 at *4 (N.D. Ill. June 18, 2015) (citing *Sara Lee Corp. v.*

Bags of N.Y., Inc., 36 F.Supp.2d 161, 165 (S.D.N.Y. 1999)). Damages awards limited to lost profits are typically ineffective deterrents because “[a] counterfeiter must fear more than just having to turn over his ill-gotten gains to the rightful owners.” *Lorillard Tobacco Co. v. S & M Cent. Serv. Corp.*, Case No. 03-cv-4986 *11 (N.D. Ill. Nov. 5, 2004). Here, none of the Defaulting Defendants have appeared and/or provided Plaintiff with information from which Plaintiff might determine Defendants’ sales. Thus, an award of statutory damages is particularly appropriate in the instant case.

Courts maintain “wide discretion” in determining an award of statutory damages. *Fitzgerald Publ'g. Co., Inc. v. Baylor Publ'g. Co.*, 807 F.2d 1110, 1116 (2d Cir. 1986). Statutory damages may be awarded not less than \$750 or more than \$30,000 per work for non willful infringement. 17 U.S.C. § 504(c)(1). The Court in its discretion may increase an award for statutory damages up to \$150,000.00 when infringement was committed willfully. 17 U.S.C. § 504(c)(2). A defendant’s intent can be of probative value for establishing willfulness, triggering an enhanced statutory award. “[A] finding of willfulness is justified if the infringer knows that its conduct is an infringement or if the infringer has acted in reckless disregard of the copyright owner's right.” *Wildlife Express Corp. v. Carol Wright Sales, Inc.*, 18 F.3d 502, 511 (7th Cir. 1994) (internal quotation marks omitted). Although “evidence that notice had been accorded to the alleged infringer before the specific acts found to have constituted infringement occurred is perhaps the most persuasive evidence of willfulness, it is not the only way that willfulness can be established.” *Video Views, Inc. v. Studio 21, Ltd.*, 925 F.2d 1010, 1021 (7th Cir. 1991), overruled on other grounds, *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 521 n.8 (1994). Rather, because “one who undertakes a course of infringing conduct may neither sneer in the face of [a] copyright owner nor hide its head in the sand like an ostrich,” *ibid.*, courts may consider a variety of other

factors when evaluating willfulness, including “evidence that the defendant ignored the plaintiff’s notices about copyright protection ... and passed the matter off as a nuisance,” *Wildlife Exp. Corp.*, 18 F.3d at 512.

This Court may award statutory damages without holding an evidentiary hearing based upon affidavits and other documentary evidence if the facts are not disputed. *Capital Records, Inc. v. Mattingley*, 461 F.Supp.2d 846 (S.D.Ill. 2006). “Even for uninjurious and unprofitable invasions of copyright the court may, if it deems just, impose a liability within statutory limits to sanction and vindicate the statutory policy.” *F.W. Woolworth Co. v. Contemporary Arts*, 344 U.S. 228, 233 (1952).

In its consideration, district courts may take into account the value of the plaintiff’s brand and the efforts taken to protect, promote, and enhance that brand. *Lorillard Tobacco Co. v. S & M Cent. Serv. Corp.*, Case No. 03-cv-4986 *9-10 (N.D. Ill. Nov. 5, 2004). In the instant case, Plaintiff spent considerable time, money and energy to develop a series that demonstrates the quality of his products, as well as readily associated with his branding. When Defendants utilize Lei Tang’s photography series as their own marketing, consumers may be confused or believe that Defendants’ products are associated with Plaintiff. This reduces Plaintiff’s goodwill considerably.

e) Defendants’ Acts of Infringement Were Willful

In the Complaint [Doc. 1], Plaintiff alleged that Defendants’ conduct was a willful violation of each stated cause of action. [*Id.* at ¶¶ 35-49]. Here, given the Defendants’ default, the allegations of the complaint are taken as true and a finding of willfulness is therefore warranted. *See Scholz Design, Inc. v. Campbell Signature Homes, LLC*, No. 08-1087 at *2 (C.D. Ill. Feb. 12, 2009) (“The Court finds that Campbell’s copyright infringement was knowing,

willful and intentional, because Scholz made this allegation in its Complaint.”); *Kinsey v. Jambow, Ltd.*, 76 F. Supp. 3d 708, 712 (N.D. Ill. 2014). Even without reliance upon Defendant’s default, it is clear that Defaulting Defendants’ infringement was willful. “Willful infringement may be attributed to the defendant’s actions where he had knowledge that his conduct constituted infringement or where he showed a reckless disregard for the owner’s rights.” *Lorillard Tobacco Co.*, Case No. 03-cv-4986 at 13 (citation omitted). Defaulting Defendants clearly had knowledge that their activities constituted infringement or at least displayed a reckless disregard for Plaintiff’s rights in his registered copyrights.

In addition, Plaintiff alleged in his Complaint that Defendants withhold information or provide false information in registering their stores to conceal their identities while engaging in infringement and to avoid being shut down. [Doc. 1 at ¶¶ 29-31]. Pursuant to 15 U.S.C. § 1117(e), this creates a rebuttable presumption of willfulness. *Int’l Typeface Corp. v. Shellabarger*, No. 06-CV-0260 (HLM), 2008 WL 11333693, at *8 (N.D. Ga. June 30, 2008) (applying the presumption where the defendant “provid[ed] false contact information to his domain name registrar, . . . ma[king] himself inaccessible to . . . [the plaintiffs]’ efforts to notify him of trademark infringement”). This Court and others in this judicial district routinely find infringement willful when defendants default. See *Chapter 4 Corp v. SUPREMECLOTHINGOUTLET.US, et al.*, Case No. 20-cv-03478 (N.D. Ill. Aug. 27, 2020) (Guzman, J.) (Doc. 59 at 6, 8-9); *Gianne Versace, S.P.A. v. Zhaofeng, et al.*, Case No. 19-cv-03993 (N.D. Ill. August 22, 2019) (Kocoras, J.) (Doc. 41 at 19, 22); *Luxottica Group S.p.A. v. Uzilol Store, et al.*, Case No. 21-cv-05458 (N.D. Ill. Jan. 18, 2022) (Shah, J.) (Docs. 44; 45 at 21, 24).

f) Plaintiff's Ongoing Investment in Marketing and Promotion and Brand Protection Efforts Justify a High Statutory Damages Award

Courts may also take into account the value of the plaintiff's brand and the efforts taken to protect, promote, and enhance that brand. *Lorillard Tobacco Co.*, Case No. 03-cv-4986 at *9-10. The success of the registered copyrights has resulted in significant counterfeiting by individuals and entities who unlawfully use the copyrights and goodwill built by Plaintiff to sell cheap imitation counterfeits. [Doc. 7 at ¶ 14-17, 18-20]. Consequently, Plaintiff has acted to protect his intellectual property rights via prosecution of the instant suit, the third suit that it has been forced to prosecute to final judgment in this judicial district.

g) A High Statutory Damages Award is Justified Due to the Acts of Infringement and Counterfeiting Having Taken Place on the Internet

Many Courts, in this district and elsewhere, have awarded high damages where the predicate acts of infringement took place on the internet. *See Monster Energy Company v. Jing, et al.*, Case No. 2015-cv-00277 at * 7 (N.D. Ill. July 6, 2015) (“The internet platform defendants used, AliExpress.com, is a busy website that provides the potential to reach a vast customer base.”); *Luxottica Group S.p.A. v. Hao Li, et al.*, Case No. 16-cv-00487 at *16 (N.D. Ill. Feb. 15, 2017) (“But even putting aside any evidence of defendant selling multiple products through multiple online sales platforms, defendant can reach a worldwide customer base on eBay alone.”); *Coach, Inc. v. Ocean Point Gifts*, Case No. 09-4215 (JBS) at *14-15 (D.N.J. Jun. 14, 2010) (finding high damage awards in counterfeit cases were “due in part to the wide market exposure that the Internet can provide”).

In addition to the fact that the internet permits wide market exposure, as Plaintiff set out in his Complaint, “Defendants often go to great lengths to conceal their identities and often use multiple fictitious names and addresses to register and operate their network of online stores. For

example, to avoid detection, Defendants register their online stores using names and physical addresses that are incomplete, contain randomly typed letters, or fail to include cities or states. Upon information and belief, Defendants regularly create new websites and online marketplace accounts on various platforms using the Seller IDs listed in Schedule “A” to the Complaint, as well as other unknown fictitious names and addresses. Such registration patterns are one of many common tactics used by the Defendants to conceal their identities, the full scope and interworking of their network, and to avoid being shut down. [Doc. 1 at ¶¶ 29-31, Doc. 7 at ¶ 22]. This point is particularly well illustrated here where Plaintiff, a small but growing retailer attempting to establish his brand and secure market share, has been persistently plagued by overseas counterfeiters doing business on the same platform.

The audacity of counterfeiters in attempting to deceive courts as to their identity and avoid liability has also been demonstrated in this judicial district. *See Camelbak Products LLC v. The Partnerships and Unincorporated Associations Identified On “Schedule A”*, 1:20-cv-01544 (N.D. Ill. January 5, 2021) (Dkt. No. 105 at 3) (“[T]he Court does not believe that the identification card submitted in support of [defendant]’s motion to vacate the default judgment is the actual identification card for the person who owns and operates [defendant]. It is either a fake identification card, or it is someone else’s identification card.”).

Due to the failure and refusal of e-commerce platforms, such as those detailed in *Camelbak Products LLC*, to implement verification procedures for sellers, Plaintiff has and will likely continue to be damaged by counterfeiters operating on e-commerce platforms. Consistent with the cited decisions, and in light of these compelling facts, Plaintiff respectfully submits that it is entitled to a high statutory damages award due to Defendants’ acts of infringement and counterfeiting having taken place on the internet, with the fact that the Defaulting Defendants

operate, so far as is known, exclusively on the wide reaching eBay and Walmart platforms deserving significant weight.

In addition, this Court has previously awarded Plaintiff statutory damages from each of the Defaulting Defendants in the amount of one hundred thousand dollars (\$100,000) per Defaulting Defendant pursuant to 15 U.S.C. § 1117(c) and one hundred thousand dollars (\$100,000) for willful infringement pursuant to 17 U.S.C. § 504(c). [Doc. 54 at 6] This Court should award at least the same damages against these Defendants.

h) Plaintiff Is Entitled to a Permanent Injunction Preventing Further Acts Of Infringement of the Tang Works

In addition to the foregoing relief, Plaintiff respectfully requests entry of a permanent injunction enjoining Defaulting Defendants from infringing or otherwise violating Plaintiff's registered copyrights in the Tang Works, including at least all injunctive relief previously awarded by this Court to Plaintiff in the TRO and Preliminary Injunction. "Without a permanent injunction, the defendants will likely continue their infringing conduct..." *Kinsey v. Jambow, Ltd.*, 76 F. Supp. 3d 708, 714 (N.D. Ill. 2014). Further, prevention of additional acts of infringement Plaintiff's registered copyrights serves the public interest. See *Miyano Mach., USA, Inc. v. MiyanoHitec Mach, Inc.*, 576 F.Supp.2d 868, 889 (N.D. Ill. 2008) ("The public interest is generally served by the enforcement of trademark laws as such laws prevent confusion among and deception of consumers ...") (citation omitted). This Court and others in this judicial district routinely grant permanent injunctive relief to prevailing plaintiffs in copyright cases.

i) The Court Should Authorize Immediate Execution Upon this Final Judgment Order

In both the sealed TRO [Doc. 17] and the preliminary injunction order, [Doc. 23] in order to avoid the fraudulent transfer of assets beyond the jurisdiction of the Court, the Court

prohibited Defaulting Defendants and third parties in possession of their assets from transferring funds. In addition to the immediate transfer of assets of the funds now restrained in Defendants' financial accounts and continued leave to serve Defaulting Defendants and third parties, including eBay and Walmart, with this order via email, relief commonly afforded to plaintiffs in similar cases. *See Luxottica Group S.p.A. v. Uziol Store, et al.* at ¶¶ 6-10, to the extent that it may be necessary for Plaintiff to utilize state law collections devices, Plaintiff respectfully requests that the Court dissolve the stay on execution contained in and as authorized by Fed.R.Civ.P. 62(a). *See* Fed. R. Civ. P. 62, Advisory Committee's Notes (2018) ("Amended Rule 62(a) expressly recognizes the court's authority to dissolve the automatic stay One reason for dissolving the automatic stay may be a risk that the judgment debtor's assets will be dissipated.").

IV. CONCLUSION

Plaintiff respectfully requests that the Court enter default judgment against each Defaulting Defendant, award statutory damages in the amount of two hundred thousand dollars (\$200,000) per Defaulting Defendant pursuant to 15 U.S.C. § 1117(c); one hundred fifty thousand dollars (\$150,000) for willful infringement pursuant to 17 U.S.C. § 504(c) and enter a permanent injunction order prohibiting Defaulting Defendants from selling counterfeit or infringing products using Plaintiff's federally registered copyrights. A proposed order, embodying the relief requested herein and identifying Defendants to be dismissed with prejudice, is submitted herewith.

[signature on following page]

Respectfully submitted this 29th day of May, 2024,

/s/ Lydia Pittaway
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